

MINUTES
REGULAR CITY COUNCIL MEETING
CITY COUNCIL OF THE CITY OF YUMA, ARIZONA
CITY COUNCIL CHAMBERS, YUMA CITY HALL
ONE CITY PLAZA, YUMA, ARIZONA
JANUARY 20, 2010
5:30 p.m.

CALL TO ORDER

Mayor Krieger called the City Council meeting to order.

INVOCATION/PLEDGE

Chuck Stewart, Pastor of the Calvary Chapel of Yuma, gave the invocation. **Councilmember Stuart** led the City Council in the pledge of allegiance.

ROLL CALL

Councilmembers Present:	Stuart, Mendoza, Beeson, Brooks-Gurrola, Johnson and Mayor Krieger
Councilmembers Absent:	McClendon
Staffmembers Present:	City Administrator, Mark Watson Deputy City Administrator, Robert Stull Police Chief, Jerry Geier Fire Chief, Jack McArthur City Attorney, Steve Moore Director of Engineering, Paul Brooberg Assistant City Attorney, Richard Files Various Department Heads or their representative City Clerk, Brigitta M. Kuiper

FINAL CALL

Mayor Krieger made a final call for the submission of Speaker Request Forms from members of the audience.

PRESENTATIONS

- **Chief Geier** officially promoted the following Yuma Police Department (YPD) personnel: Brian Scanlan to Lieutenant, and, Dan Wilkey to Lieutenant.
- **Chief McArthur** recognized Rich Walton, Golf Professional at Desert Hills Golf Course, for his quick action in the use of an Automatic External Defibrillator (AED) and assistance to a golfer. A representative of *Cardiac Science*, the maker of the AED, also presented Walton with a certificate. **Watson** congratulated Walton for his efforts on behalf of the City of Yuma.

COMMUNICATIONS / FACTUAL RESPONSES

Watson announced there was a late afternoon press release regarding the temporary closure of the Bark Park, which is a retention basin, due to the recent rain.

I. CALL TO THE PUBLIC - none

II. MOTION CONSENT AGENDA

Motion (Johnson/Mendoza): To continue the approval of the November 18, 2009 Regular City Council Meeting minutes to the February 3, 2010 Regular City Council Meeting. Voice vote: **approved 6-0.**

Motion (Johnson/Mendoza): To approve the Motion Consent Agenda, with the exception of B4 which was pulled by Johnson and Item B6 which was pulled by Stuart for separate consideration. Voice vote: **approved 6-0.**

B4 Bid Award: Fire Department Pre-Engineered Training Tower and Burn Building

Motion (Stuart/Beeson): To continue Motion Consent Agenda Item B4, Bid Award for the Fire Department Pre-Engineered Training Tower and Burn Building to the February 3, 2010 Regular City Council Meeting, at the request of City Administration.

Watson stated that the bid award for the Fire Department Pre-Engineered Training Tower and Burn Building is currently under protest. Bid protests require findings of facts which have not been included in the agenda packet. Staff would prefer to delay the bid award two weeks in order to provide the City Council with the findings and staff's recommendation. The City Council will have an opportunity to hear from the parties protesting the bid and make a final decision to award the bid.

Speaker

Troy Eckard, President of Eckard Commercial Construction, 13489 S. 6¼E, expressed his appreciation in the continuation of the bid award. The City has a valid bid process; however, consideration should be given to the protest, honoring the City's process in awarding bids.

Moore spoke with Eckard's attorney and explained tonight's proceeding regarding the bid protest; communication will continue as information becomes available.

Voice vote: **approved 5-0-1**; Mayor Krieger declared a conflict of interest due to a business relationship.

A. Approval of minutes of the following City Council meeting:

Special Worksession

December 1, 2009

B. Approval of Staff Recommendations:

1. Executive Sessions may be held at the next regularly scheduled Special Worksession, Regular Worksession and City Council Meeting for personnel, legal, litigation and real estate matters pursuant to A.R.S. § 38-431.03 Section A (1), (3), (4), and (7). (Attny)
2. Approve a Special Event Liquor License application submitted by Elery A. Gross, on behalf of the North End Rotary Club of Yuma, for a Renaissance Fair. The event will be held February 5, 2010 from 10:00 a.m. to 6:00 p.m., February 6, 2010 from 10:00 a.m. to 6:00 p.m. and February 7, 2010

from 10:00 a.m. to 6:00 p.m., at the West Wetlands Park, 2200 W. Water Street. (SP10-02)
(Admin/Clerk)

3. Declare surplus and award to the sole bidder for the Sale of Firearms (164) for a total of \$12,770.00 to: Sprague's Sports Inc., Yuma, Arizona. (Bid #2010000244) (Fin/Pur)
4. Continued by motion to the Regular City Council meeting of February 3, 2010.
5. Authorize and direct the City Administrator to submit a Certificate of Necessity (CON) application to the Arizona Department of Health Services (ADHS). (Fire/Admin)
6. Removed for separate consideration; see below.

Motion Consent Agenda Item Removed for Separate Consideration

- B.6 Authorize execution of the renewal agreement and terms of employment with Mark S. Watson to serve as City Administrator for the City of Yuma. (Mayor & Council)

Stuart: This agreement is important to the City as a whole. Stuart pointed out the current chain of command as well as the severance costs to the community. A past administrator served without a contract; he will move to not renew the agreement

Motion (Stuart/Mayor Krieger): To not renew the contract with the City Administrator.

Discussion

Beeson asked if the terms of the agreement would remain in effect regarding salary, benefits and other incentives if an agreement was not in place. **Mayor Krieger** stated that an agreement would just not exist, however, Watson will continue as the City Administrator without going into the negotiations of a new agreement.

Mendoza disagreed with Councilmember Stuart stating the current chain of command is a poor reason to not renew the agreement; a chain of command exists in every occupation, organization, and department. An agreement will tie Watson to the job of City Administrator while protecting the City at the same time. The City Administrator is here to run the City while being overseen by the City Council. Working without an agreement may lead to difficulty in recruiting others for the job.

Watson stated his contract was developed five years ago when he was hired as the City Administrator. Severance pay was included in the contract; however, the length of time it can be paid is governed by the City Charter. The standard practice of municipalities is a six month severance pay for those with similar experience, age and tenure; the Yuma City Charter prohibits more than two months. The City has agreed to give advance notice when his services are no longer needed along with the severance pay. There are no changes to the agreement and approval of the contract is important to him as the City Administrator.

Stuart clarified that the current contract with the City Administrator was previously drawn up without input from the City Attorney. The total amount of the severance package is approximately \$130,000. **Moore** stated that the City Attorney works for the City Administrator and typically does not interject with issues

between the Mayor and Council and the City Administrator. **Mayor Krieger** noted that regardless of tonight's decision, it does not preclude the City Council from taking action at a later date.

Beeson asked if the issue would warrant an Executive Session. **Mayor Krieger** stated that there are posting requirements the City must meet in order to discuss the issue in an Executive Session and those requirements have not been met. **Watson** reminded City Council, and those in the audience, that the State of Arizona requires each new City Council to ratify or renew the contract of the City Administrator, this is the only reason this action has been brought forward.

Roll call vote: **adopted** 5-1; Mendoza voting nay.

III. RESOLUTION CONSENT AGENDA

Motion (Johnson/Beeson): To approve the Resolution Consent Agenda as recommended.

Kuiper displayed the following titles:

Resolution R2010-01

A resolution of the City Council of the City of Yuma, Arizona, authorizing and approving a Development Agreement deferring Citywide Development Fees and Water and Sanitary Sewer Capacity fees for Lot 18, Victoria Meadows Subdivision

(Development Fee Deferral: Fowler and Kay Malone Trust dated 03-23-2006) (Eng)

Resolution R2010-02

A resolution of the City Council of the City of Yuma, Arizona, declaring that the City Council deems the granting of a certain franchise beneficial for the City of Yuma; ordering a Mail Ballot Special Election to be held on May 18, 2010 for the purpose of submitting to the qualified electors of the City of Yuma the question as to whether or not a franchise shall be granted to Arizona Public Service Company

(Admin/Clerk)

Resolution R2010-03

A resolution of the City Council of the City of Yuma, Arizona, declaring that the City Council deems the granting of a certain franchise extension beneficial for the City of Yuma; ordering a Mail Ballot Special Election to be held on May 18, 2010 for the purpose of submitting to the qualified electors of the City of Yuma the question as to whether or not a franchise extension shall be granted to Southwest Gas Corporation

(Admin/Clerk)

Resolution R2010-04

A resolution of the City Council of the City of Yuma, Arizona, adopting the Emergency Medical Services Ambulance Transport Needs Assessment dated November 2009 for the City of Yuma, Arizona.

(Fire/Admin)

Roll call vote: **adopted** 6-0.

IV. ADOPTION OF ORDINANCES CONSENT AGENDA

Ordinance O2010-05 Property Acquisition: 32nd Street Improvements

Speaker

Doc Burdick, P.O. Box 10160, Yuma, expressed his concern regarding the cost of land for the retention basin; \$750,000 is a lot of money especially when there other things that the City needs. He urged City Council to vote no on this acquisition.

Discussion

Beeson requested an explanation of the project. There is \$3.8 million budgeted for this project, however, it will only cost \$750,000. Will the remaining money go towards other projects? **Brooberg** stated that the acquisition was previously approved in October 2009, and the project has been in the Capital Improvement Plan for approximately 15 years. The legal description was omitted for the property; \$750,000 is the appraisal price of the property. In 1998 the City prepared a preliminary design concept report but did not have the funding for the project; the project remained inactive until 2003. The design process is almost complete, the storm water basin is necessary on the west side of the East Main Canal for the widening of 32nd Street and for the Smucker Basin site. The Yuma County Flood Control District's West Mesa Drainage Study shows an estimated 50 acre feet of water that will flow towards Kofa High School ball fields that cannot be contained by the existing facilities; therefore additional facilities are needed.

Johnson inquired about the source of funding for the project. **Brooberg** stated that funding for the acquisition is from road tax and related bond funds only; there is no general fund money being used. **Johnson** stated if the money isn't spent on this project, it cannot be spent on police or fire and would have to stay in the bank because the voters have dictated that the monies collected from road taxes can only be spent on roadways. **Brooberg**: Correct, the funds are dedicated. **Johnson** asked if the first phase of 32nd Street reconstruction has been completed. **Brooberg**: Yes, the first phase included the addition of a new bridge over the East Main Canal, a 20-inch water transmission line paid for by water bond monies, and a partial build up of the roadway base to be utilized for the actual construction phase of this roadway.

Stuart asked if the City would receive any benefit from Flood Control District dollars in this project. **Brooberg** stated this project is not slated to benefit from Flood Control District dollars; however, the Smucker basin project is targeted for those funds.

Motion (Mayor Krieger/Mendoza): To adopt the Ordinance Consent Agenda as recommended.

Kuiper displayed the following titles:

Ordinance O2010-05

An ordinance of the City Council of the City of Yuma, Arizona, authorizing and directing that a certain parcel of real property, hereinafter described, be acquired by the City of Yuma, by gift, purchase or under the power of eminent domain, for the reason that such property is required to improve the public roadway and utility infrastructure and other public purposes as may be related thereto, and authorizing payment therefor, together with costs necessary for the acquisition of said parcel of real property

(Property acquisition: 32nd Street improvements) (Eng)

Ordinance O2010-06

An ordinance of the City Council of the City of Yuma, Arizona, authorizing and directing that a certain parcel of real property, hereinafter described, be conveyed by easement to Arizona Public Service Company by the City of Yuma, for the reason that such easement is required for the construction, operation and maintenance of City of Yuma pathway infrastructure (Conveyance of Easement: Arizona Public Service Company) (Eng)

Ordinance O2010-07

An ordinance of the City Council of the City of Yuma, Arizona, amending Chapter 154 of the Yuma City Code, as amended, relating to zoning regulations, providing for changes to the zoning code to allow temporary signs for businesses that are currently impacted by any type of undergoing active roadway construction, repair, or maintenance that is occurring in front of and/or adjacent to the property, and providing penalties for violations thereof (Zoning Code text amendment for temporary signs; Z2009-018R) (DCD/Planning)

Ordinance O2010-08

An ordinance of the City Council of the City of Yuma, Arizona, ordering a mail ballot Special Election for the qualified electors of the City of Yuma, Arizona, for the purpose of determining whether to amend Article XII, Section 2 "Local, Preference", of the Charter of the City of Yuma, Arizona, as amended (Admin/Clerk)

Roll call vote: **adopted 6-0.**

V. INTRODUCTION OF ORDINANCES

Kuiper displayed the following titles:

Ordinance O2010-09

An ordinance of the City Council of the City of Yuma, Arizona, amending Chapter 154 of the Yuma City Code, as amended, relating to zoning regulations, providing for changes to the Zoning Code to correct the word "signing" with the word "signage," and providing penalties for violations thereof (DCD/Planning)

Ordinance O2010-10

An ordinance of the City Council of the City of Yuma, Arizona, amending Chapter 154 of the Yuma City Code, as amended, relating to zoning regulations, to allow zoning maps to automatically reflect extending a new zoning district to the centerline of contiguous rights-of-way using an existing legal description (Z2009-017) (DCD/Planning)

Ordinance O2010-12

An ordinance of the City Council of the City of Yuma, Arizona, amending Chapter 154 of the Yuma City Code, providing for changes to the Cielo Verde Specific Plan and providing penalties for violations thereof (Z2009-022) (DCD/Planning)

Ordinance O2010-13

An ordinance of the City Council of the City of Yuma, Arizona, authorizing and directing that a certain parcel of real property, hereinafter described, be acquired by the City of Yuma, by gift, purchase or under the power of eminent domain, for the reason that such property is required to improve the public roadway and utility infrastructure and other public purposes as may be related thereto, and authorizing payment therefor, together with costs necessary for the acquisition of said parcel of real property

(Right-of-Way Acquisition: 12th Street, Lot 237 of Magnolia Village Unit No. 3 (Eng)

VI. PUBLIC HEARINGS

Appeal of Citywide Development Fees: The Bradley Family Trust – City Council to hear and decide the Bradley Family Trust Citywide Development Fee appeal pursuant to City Code Section 157-04. The appeal seeks a refund of Citywide Development Fees paid for two of four lots in the Palms RV subdivision. The appeal also seeks a waiver of fees for the remaining two lots.

Mayor Krieger opened the public hearing at 6:17 p.m.

Coral Bradley, Appellant, 3400 S. Avenue 7E, stated that she is available for questions.

Files presented the following information:

- The appeal concerns the fair assessment of development fees.
- The appellant, Coral Bradley, does not believe that RV lots should be charged development fees when hooking up to electricity, only a City of Yuma Electrical Permit should be required.
 - Bradley argues that an electrical permit is not the same thing as a building permit; the ordinance states that when a building permit is issued, the development fees shall be paid.
 - The argument ignores the purpose and intent of the development fee ordinance which is to ensure that new development contributes its proportionate share towards the cost of public facilities.
 - That is the fairness principal, new development pays its fair share.
 - The definition in the ordinance of new development is “any change in use of an existing non-residential building, structure or lot requiring any form of City approval, and which increases the demand for one or more public facility.”
 - The term “building permit” is not defined in the ordinance but the City Council may interpret “building permit” to include plumbing permits, electrical permits, the traditional definition of building permits, etc.
- There are 453 lots in the Palms RV Resort subdivision, four lots are owned by the Bradley Family Trust.
 - Two of the four lots are connected to electricity and Citywide Development Fees were paid in the amount of \$3,101 per lot.
- The majority of the lots are owned by the Palms RV Resort.
- In October 2009, Palms RV Resort entered into a Development Agreement with the City of Yuma agreeing to pay \$471,000 in Citywide Development Fees in four installments to secure electrical permits.
 - The intent was not to build on the lots but to rent the lots in the hopes of attracting potential purchasers
 - The \$471,000 equates to \$3,101 per lot.

- Excluding the Bradley Family Trust from paying the development fees would violate the fairness principle.
- Files urged the City Council to deny Bradley's appeal on the basis of the reasons stated.

Bradley presented the following information:

- Met with Bob Stull regarding Impact Fees
 - Fees were unknown to her until she requested electric hook up
 - Stull informed her of the appeal process
- Appeal was file in Nov 2009
 - Intent was for all Palm RV Resort lot owners to be exempt – not just the four lots owned by the Bradley Family Trust
- City's development fee ordinance does not state impact fees are required upon hook-up of electricity
- According to Arizona Revised Statutes, the developer of residential dwelling units shall be required to pay fees when construction permits are issued or pursuant to a development agreement.

Mayor Krieger asked if Bradley claims that the 453 lots have no impact to the City's infrastructure, streets, parks and other amenities that the City must provide by law. Is the police department expected at the door when 9-1-1 is dialed? **Bradley:** Absolutely. **Mayor Krieger:** Individuals benefit from impact fees paid by the development, regardless of the source, and should pay their share. **Bradley** agreed, if that is the only way the City can receives fund. Although RV lot owners pay property taxes, not all receive the benefits of being in the City. **Mayor Krieger** stated that there is nothing that binds an individual from staying one week or all year and the City can not determine the length of time one stays in Yuma. The City has a financial obligation to the tax payers to be as fair as possible.

Bradley stated that approximately 25% of the lots have homes on them, which are permanent structures and are required to pay the impact fees – there is no argument against that situation. RV lots are not addressed in the Yuma City Code; they were added after the fact, which is not fair. She suggested a change in the ordinance to reflect impact fees and RV lots so people in the future will know what to expect. **Mayor Krieger** asked if the fee is too high or if the fee should not be collected. **Bradley** stated that for many people on fixed incomes the fee is relatively high, a more moderate fee would be desired in addition to the permit fees.

Johnson clarified the impact fees on the RV lots is \$3,101. **Files** stated that is correct; there are no sanitation fees due to a contract for the pick up of their garbage. **Johnson** asked if the fees would only be for parks, fire, and police and not for water, sewer or solid waste pick up. **Files** confirmed the information. **Johnson** asked what the fees were for single family residential. **Stull:** \$5,920. **Johnson** stated that he is on a fixed income, is retired, and lives alone and he paid \$5,920 in impact fees for his house; it's a general average which is fair and equitable. **Files** stated that per a case before the Arizona Supreme Court, impact fees must be generally proportional.

Bradley the economic situation is creating difficulties in the sales of lots; having to pay an additional \$3,100 is also making it difficult for potential buyers.

Mayor Krieger sympathized with the situation people are in whether they are on fixed incomes or not. The current situation applies not only to the general public but also to cities and towns who have spent and invested millions of dollars on infrastructure in anticipation of growth. Cities and towns are required to have levels of service proportionate to the population. It is reasonable to assume that everybody expects a

level of service that is in the public's best interest. During a recent job summit, different organizations shared the issues cities face in attracting businesses, jobs and boosting the economy. It's difficult to extract fees from property owners in a time when the economy is in a downturn but the City has a responsibility to be fair and to ensure fiscal integrity.

Stuart stated the appeal is seeking a refund of the Citywide Development fees paid for two lots in the amount of \$6,202 and the waiver of fees on another \$6,202. If this appeal is approved, would the City be required to refund \$471,000 to the Palms RV Resort? Will it open the door for other appeals to come forward? **Stull** stated that when he met with Bradley there were a number of people who had paid the fees under protest. It was agreed by both parties that one appeal would apply to the other lot owners who had paid but not necessarily for future payments. This appeal only applies to those who have already paid.

Mendoza stated that everybody is on a fixed income whether they are retired or not; the same amount of income comes in every month as well as the monthly expenses. Bradley agrees growth should pay for growth and when she picks up the phone for emergency services she expects them to show up. If approved, this appeal will set precedence and may result in the City having to refund many more impact fees based on the argument that the fees are too high. The economy is affecting many subdivisions in Yuma.

Motion (Mendoza/Beeson): To deny the development fee appeal of the Bradley Family Trust.

Johnson asked if the suggested motion should include the findings of fact that are required by law. **Files:** Yes, the City needs to ensure that the basis for the case decision is reflected in the motion should this case be appealed to the Superior Court. There has been a lot of discussion and the record should speak for itself; however, the City Council may choose to amend the motion to include the findings of fact if desired.

Johnson asked Councilmember Mendoza if he would accept an amendment of the motion to include the findings of fact. **Mendoza** agreed.

Motion (Johnson/Mayor Krieger): To amend the motion to include the following language:

1. Pursuant to City Code Section 157-01(B), Citywide Development Fees are payable with "any change in use of an existing non-residential building, structure or lot requiring any form of City approval, and which increases the demand for one or more public facility; except as otherwise provided in §157-01(D)(4)."
2. Citywide Development Fees are collected at the time of City approval, whether it is issuance of a building permit, electrical permit, plumbing permit, mechanical permit, encroachment permit, construction permit, certificate of occupancy, or any other form of required City approval.
3. Excluding an RV lot owner from the payment of Citywide Development Fees, for the sole reason that the RV lot owner only obtains an electrical permit, would unfairly discriminate in favor of such RV lot owners.
4. Placing an electrical meter and RV upon an existing vacant lot is a change in use that increases demand for one or more public facilities and requires City approval and payment of Citywide Development Fees.
5. For those reasons stated herein, the Bradley appeal is denied in its entirety.

Roll call vote on the amendment: **adopted** 6-0.

Roll call vote on the motion, as amended: **adopted** 6-0.

Mayor Krieger closed the Public Hearing at 6:50 p.m.

VII. APPOINTMENTS, ANNOUNCEMENTS AND SCHEDULING

Mayor Krieger requested that the issue of the Palo Verde wall be placed on a future agenda.

Motion (Johnson/Mendoza): To cancel all future Special Roundtable Worksessions held each Tuesday at 3:00 p.m. preceding a Wednesday Regular City Council meeting.

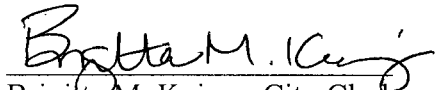
Beeson stated he likes the Roundtables and feels that he gets value out of the meetings. **Mendoza** noted that future Special Roundtable Worksessions will be set on an individual basis as necessary.

Voice vote: **approved** 5-1; Beeson voting nay.

VIII. SUMMARY OF CURRENT EVENTS - none

IX. EXECUTIVE SESSION/ADJOURNMENT

Mayor Krieger adjourned the meeting at 6:52 p.m. No Executive Session was held.


Brigitta M. Kuiper, City Clerk

APPROVED:


Alan L. Krieger, Mayor

